

STEPTOE & JOHNSON

1250 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

CHERYL A. SKIGIN

(202) 862-2053

RECORDATION NO. 11965-4
FILED 1425

AUG 29 1980 10 45 AM

August 29, 1980

INTERSTATE COMMERCE COMMISSION

6-242A030

No.

Date AUG 29 1980

Fee \$ 10.00

ICC Washington, D. C.

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Room 2215, 12th & Constitution Avenues
Washington, DC 20423

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U. S. C. § 11303 are six (6) copies of the following document:

Amendment dated as of August 1, 1980 (to the Credit and Security Agreement dated as of October 1, 1979) between Brae Corporation and Manufacturers Hanover Trust Company, The First National Bank of Boston, Crocker National Bank, and, The Bank of California, N.A.

It relates to the same railroad equipment as that identified in the Credit and Security Agreement dated as of October 1, 1979, assigned recordation number 11965.

The names and addresses of the parties to the transactions evidenced by the document described above are as follows:

Debtor: Brae Corporation
Suite 1760, 3 Embarcadero Center
San Francisco, CA 94111

Lender: Crocker National Bank
One Montgomery Street
San Francisco, CA 94104

Lender: Bank of California, N. A.
400 California Street
San Francisco, CA 94104

Lender: First National Bank of Boston
100 Federal Street
Boston, MA 02110

Lender/ Agent: Manufacturers Hanover Trust Company
741 Fifth Avenue
New York, NY 10022

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FEE OPERATION CR.

C. Dennis Harris

Ms. Mergenovich


-2-

August 29, 1980

It is requested that this document be filed and recorded under the names of the parties as set forth above. In view of the fact that it relates to the Credit and Security Agreement (previously identified), it is additionally requested that it be assigned the next available letter designation (which is believed to be "F") under the primary recordation number - 11965.

Please return to the person presenting this letter: (1) your letter acknowledging the filing, (2) a receipt for the \$10.00 filing fee paid by check drawn on this firm, (3) the enclosed copies of this letter, and (4) any copies of the document not required for recordation--all stamped to indicate appropriate filing information.

Very truly yours,


Cheryl A. Skigin

mbm

Enclosures

ORIGINAL
DUPLICATE

or stencil the Cars with letters not to exceed one inch in height with the recording marks and such other information as required by the rules of the AAR.

5. Fixed Rent

MA 61. The monthly fixed rent with respect to each Car is specified in Paragraph 2 of the Schedule on which such Car is listed. Fixed rent shall commence to accrue for each Car on the Effective Date for such Car and shall continue to accrue throughout the term of this Agreement, unless such Car is removed from service without replacement as provided in Section 9E or destroyed as described in Section 10. The first fixed rent payment for each Car shall be made on the last day of the month in which the Effective Date occurs and shall be in an amount equal to one-thirtieth of the monthly fixed rent multiplied by the number of days from the Effective Date through the last day of such month. Subsequent payments of fixed rent shall be made in advance on or before the first day of each succeeding month during the term of this Agreement. The last payment of fixed rent shall be in an amount equal to one-thirtieth of the monthly fixed rent, multiplied by the number of days from the first day of the final month through the termination date of this Agreement.

6. Additional Rent

On or before April 1 of each year, Lessor shall determine the total number of miles that each Car has travelled both loaded and empty during (i) the preceding calendar year ("Full Year") or (ii) in the case of calendar years in which the Effective Date is subsequent to January 1 or the termination date is prior to December 31, that portion of the year during which such Car is leased pursuant to this Agreement ("Partial Year").

For each Car traveling more miles during any Full or Partial Year than the number of miles set forth in Paragraph 3 of the Schedule on which such Car is listed, Lessee will pay to Lessor as additional rent the amount set forth in such Paragraph 3. The determination of the total number of miles travelled by each Car during any Full or Partial Year shall be made by multiplying by two the total number of miles that such Car travelled while loaded, unless Lessor has in its possession information sufficient to ascertain more precisely the total mileage travelled by such Car.

7. Allowances

A. Any mileage allowances or other compensation payable by railroads for use of the Cars ("Allowances") shall be collected by Lessor. Lessee shall report regularly to Lessor movements of the Cars, giving the date, destination and routing of the Cars and loading and unloading information, together with all other relevant information which Lessee may receive from railroads or other sources.

B. Insofar as applicable laws and regulations permit, Lessee (unless an event of default specified in Section 20 shall have occurred and be continuing) shall be entitled to all Allowances collected by Lessor from railroads as a credit against fixed rent and additional rent, but in no event shall such credit exceed the total of fixed rent and additional rent payable by Lessee during the term of this Agreement.

8. Use of Cars

A. Lessee agrees, to the extent possible, to use the Cars so that mileage under load will equal or exceed mileage empty on each railroad over which the Cars move. In the event that empty mileage should exceed loaded mileage on any railroad, and Lessor is notified by such railroad to equalize such mileage or to pay for such excess, Lessee shall, upon notice from Lessor, equalize such excess empty mileage within the time limit established by the railroad or pay Lessor such excess at the rate established by applicable tariffs.

B. Lessee shall use the Cars exclusively within the continental United States of America. Lessee agrees that if any of the Cars are inadvertently used outside the continental United States of America, Lessee shall reimburse Lessor for any customs, duties, taxes or other expenses resulting from such use.

9. Maintenance

A. Lessee will preserve the Cars in good condition and will not alter the physical structure of any Car without the prior written consent of Lessor. Lessee agrees to give Lessor prompt written notice of the need to repair or perform maintenance upon any Car.

B. Except as otherwise provided in this Section 9, Lessor agrees at its expense to maintain the Cars in good condition and repair in accordance with the Code of Rules and the rules and regulations of the Federal Railway Administration. All manufacturers' warranties with respect to the Cars shall inure to the benefit of Lessor, and to the extent such warranties are assignable, to the Lessee. A copy of the manufacturers' warranties shall be

C. Lessor's obligation to maintain and repair the Cars under Section 9B shall not extend to mandatory changes in the design of any Car, its components, configurations or safety appliances or other changes required by legislation or regulations effective after the Effective Date for such Car. In the event of such a change applicable to any Car Lessor may but need not terminate this Agreement with respect to such Car. Lessor's maintenance obligations shall not extend to repair or maintenance required as a result of, or attributable to: (i) defects in the manufacture or workmanship of any Car or any component thereof or any material incorporated therein by the manufacturer thereof or by any person other than the Lessor, its agents or representatives; (ii) damage caused by Lessee, its agents or representatives or any third party (other than a railroad), or while any Car is in Lessee's possession; (iii) damage caused to any Car by any corrosive or abrasive substance loaded therein or used in connection therewith; (iv) damage caused to any Car by open flames, vibrations, sledges or other similar devices during loading or unloading; (v) excessive or unbalanced loading; and (vi) special interior linings, interior loading devices and removable parts.

sent to
Lessee be
fore del-
ivery of
the cars.

D. Lessor shall forward to Lessee any bills for repairs made to the Cars by railroads because of damage caused in any of the circumstances set forth in Section 9C, and Lessee shall promptly pay such bills. In the case of damage caused to the Cars which is the responsibility of a railroad under the Code of Rules, Lessor shall perform the necessary repairs and shall prepare and submit such documents and take such other actions as are necessary to recover the cost of such repairs in accordance with the Code of Rules. Lessor shall be entitled to any costs so recovered.

E. If any Car is (i) unavailable for use as a result of casualty (less than complete destruction) or failure of Lessor properly to maintain and repair such Car for any reason not specifically excepted in Section 9C and (ii) reported by Lessee to Lessor as in need of repair, the fixed rent for such Car shall abate from the ~~seventh~~^{* seventh} day after the date when such Car is so reported until it is repaired and returned to service or replaced by another Car. At Lessor's option, this Agreement may be terminated as to any such Car and, if so terminated, such Car need not be repaired or replaced. Lessor shall have the right, but shall not be obligated, to substitute for any Car which shall be so damaged or destroyed another Car of similar type, capacity and condition.

10. Destruction of Cars

Responsibility for loss, destruction, or damage to the Cars (including parts and appurtenances) shall be fixed by the then prevailing Code of Rules. The Code of Rules shall establish the rights, obligations and liabilities of Lessor, Lessee, and any railroad subscribing thereto and moving the Cars over its lines in respect of all matters to which the Code of Rules relates. In the event that any Car is lost, damaged, or destroyed while on the tracks of Lessee, any private track, or on the tracks of a railroad that does not subscribe to the Code of Rules, or in the event that any Car is damaged by any commodity transported or stored in it, such repairs, renewals, or replacements as may be necessary to replace such Car or to place it in good order and repair shall be at the sole cost and expense of Lessee, provided that in the event of destruction of or irreparable damage to any Car, at Lessor's option, Lessee shall promptly pay to Lessor the value of such Car in accordance with the Code of Rules. Lessor and Lessee agree to cooperate with and to assist each other in any

reasonable manner requested to establish proper claims against third parties responsible for loss, destruction or damage to the Cars.

11. Indemnities

A. Except as otherwise provided in Section 10, Lessee agrees to indemnify and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever (whether as a result of damage to the Cars or injury to third parties or their property), regardless of the cause thereof, and any expense in connection therewith (including legal fees), arising out of the use or operation of the Cars during the term of this Agreement.

B. Lessor shall not be liable for any loss of or damage to any commodities loaded or shipped in the Cars. Lessee agrees to assume responsibility for, to indemnify Lessor against, and to hold Lessor harmless from, any claim in respect of such loss or damage and to assume responsibility for any damage caused to any Car by such commodities.

12. Insurance

A. Lessee shall maintain (or cause to be maintained) during the term of this Agreement policies of property damage and public liability insurance (or programs of self insurance) on the Cars in such form and amount and covering such risks and with such carriers as Lessor reasonably may designate.

B. Lessee covenants that it will not do any act or voluntarily permit any act to be done whereby any insurance on the Cars shall or may be suspended, impaired or defeated. In the event that any Car shall be lost, destroyed, or irreparably damaged from any cause whatsoever during the term of this Agreement, Lessor and Lessee shall proceed diligently and cooperate fully with each other in the recovery of any and all proceeds of insurance applicable thereto.

13. Disclaimer of Warranties by Lessor

EXCEPT AS PROVIDED IN SECTION 9, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PRACTICAL PURPOSE WITH RESPECT TO THE CARS. LESSOR SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS ARISING IN STRICT LIABILITY.

14. Investment Tax Credit

Lessee recognizes that Lessor will utilize the investment credit afforded in respect of the Cars by Sections 38 and 46 through 50 of the Internal Revenue Code. Lessee agrees that it will not commit any act, or fail to take any act, as a result of which Lessor shall lose the benefit of all or any portion of such investment credit.

15. Taxes

A. Lessor shall be responsible for and shall pay all property taxes levied upon the Cars and file all property tax reports relating thereto.

B. Lessor shall not be responsible for the payment of any tax, tariff, duty, customs, switching, demurrage or other charge made by any governmental agency, railroad or other person in respect of any Car, except as provided in Section 15A. Lessee agrees to pay or reimburse Lessor promptly for any such tax, tariff, demurrage or other charges.

16. Assignment; Subordination; Title

A. Lessor's rights hereunder may be assigned, mortgaged or otherwise transferred, either in whole or in part, and Lessor may assign, mortgage or otherwise transfer title to any Car with or without notice to Lessee.

B. This Agreement and all of Lessee's rights under this Agreement, and all rights of any person who claims rights under this Agreement through Lessee are subject and subordinate to the terms, covenants and conditions of all chattel mortgages, conditional sales agreements, assignments, equipment trust agreements, finance leases or other security documents covering the Cars or any of them heretofore or hereafter created and entered into by Lessor and to all of the rights of any such chattel mortgagee, assignee, trustee, owner or other holder of interest in the Cars. In the event of any such assignment, mortgage or transfer, Lessee agrees to execute any and all documents required by the assignee, mortgagee or transferee to confirm such third party's interest in and to the Cars and this Agreement, and to confirm the subordination provisions contained in this Section 16B.

C. Lessee acknowledges and agrees that by execution of this Agreement it does not obtain, and by payment and performance hereunder it will not obtain, title to any Car or any interest therein, except solely as lessee hereunder. Lessee shall keep the Cars free from all encumbrances, liens and security interests of all kinds (other than those granted by Lessor), which could adversely affect Lessor's title thereto.

17. Sublease

Lessee shall make no transfer, sublease, or assignment of this Agreement or of any Car (by operation of law or otherwise) without the prior written consent* of Lessor. Lessee agrees (i) that no sublease shall permit use of the Cars outside of the continental United States of America, (ii) that no sublessee shall be a tax-exempt organization or governmental unit and (iii) that all subleases shall be expressly subordinate as provided in Section 16B. No sublease shall in any way relieve Lessee from its obligations to Lessor under this Agreement.

18. Compliance with Regulations

A. At the time of delivery of the Cars by Lessor to Lessee, the Cars will conform to the applicable specifications and to all governmental laws, regulations, requirements and rules, and to all of the standards recommended by the AAR for railroad equipment of the character of the Cars. Except as provided in Section 18B, Lessee shall, at its own expense, comply with all governmental laws, regulations and requirements, with the Code of Rules and with the rules and regulations of the Federal Railway Administration with respect to the use, maintenance, and operation of the Cars. Lessee shall be responsible for obtaining all necessary railroad permissions, approvals and consents for use of the Cars and shall bear all risk of failure to obtain such permission, approval and consent, or of cancellation thereof. Lessor shall take all actions reasonably requested by Lessee in order to assist Lessee in obtaining such permissions, approvals, or consents.

B. In case any equipment or appliance on any Car shall be required to be changed or replaced in order to comply with applicable laws, regulations, requirements or rules, Lessor agrees to cause such changes or replacements to be made at its expense, subject to Section 9C. Any part or parts installed or replacements made upon any Car by Lessor or Lessee shall be considered accessions to such Car; and title thereto shall immediately vest in Lessor without further act.

19. Inspections

Lessee will make the Cars available to Lessor or any secured party of Lessor at any reasonable time on request for maintenance inspection and for regular maintenance in accordance with Lessor's maintenance responsibility. Lessee will be responsible for all costs of transporting the Cars to maintenance facilities.

20. Events of Default

A. The occurrence of any of the following shall constitute an Event of Default:

(i) the failure by Lessee to make any payment of fixed or additional rent or other amount required to be paid by Lessee under this Agreement within ten days after the date such payment is due;

(ii) any breach by Lessee of any agreement or covenant contained in this Agreement, which is not cured within 10 days after notice thereof from Lessor to Lessee;

(iii) any act of insolvency or bankruptcy by Lessee or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors;

(iv) the filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within 45 days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within 45 days from the date of such filing or appointment;

(v) any attempt by Lessee, without Lessor's consent, to assign, sublease or transfer this Agreement or any interest in or the right to use or possession of the Cars;

(vi) the failure by Lessee to redeliver to the Lessor any Car in the manner described in Section 21 on or before the date this Agreement expires with respect to such Car.

B. Upon the occurrence of any Event of Default, Lessor may, at its option:

(i) proceed by appropriate court action or actions either at law or in equity to enforce specific performance by Lessee of this Agreement and/or to recover damages for breach hereof; or

(ii) terminate this Agreement, whereupon all rights of Lessee to the use of the Cars shall absolutely cease and terminate as though this Agreement had never been made, and all fixed rent not theretofore due and payable with respect to the Cars shall forthwith become due and payable.

Any proceeds to Lessor from reletting the Cars shall be applied first to the expenses incurred in reletting the Cars (including, but not limited to, all costs of repossession and delivery of the Cars to the new lessee) and then in payment of the amount due Lessor under this Agreement.

Upon the occurrence of an Event of Default, Lessor may exercise its remedies with respect to some or all of the Cars and some or all of the Cars on any Schedule. Lessee shall be liable for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Car. The remedies provided in this Agreement in favor of Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies existing at law or in equity. To the extent permitted by applicable law, Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided.

21. Return of Cars

Upon termination of this Agreement with respect to a Car, Lessee, at its sole expense, shall return such Car to Lessor at ~~any location specified by Lessor within 100 miles of the point of return~~. Such Car shall be (i) empty and free from residue, (ii) in such condition as will permit Lessor immediately to sell or relet such Car without repair (other than repairs that Lessor is required to make pursuant to Section 9) and (iii) in compliance with all applicable laws and regulations. Lessee shall, on demand, reimburse Lessor for the cost of cleaning any returned Car. In the event that any Car is not redelivered to Lessor on or before the date this Agreement expires with respect to such Car, all of the obligations of Lessee under this Agreement with respect to such Car shall remain in full force and effect until such Car is redelivered to Lessor; *provided, however*, that the fixed rent for such Car after the expiration date shall be 150% the fixed rent for such Car specified in the Schedule on which such Car is listed.

22. Miscellaneous

A. Each party agrees to execute the documents contemplated by this Agreement and such other documents as may reasonably be required in furtherance of this Agreement.

B. This Agreement shall be governed by and construed according to the laws of the State of California.

C. All notices hereunder shall be in writing and shall be deemed given when delivered personally or 72 hours after it has been deposited in the United States mail, postage prepaid, certified or registered, addressed to the other party at the following address: if to Lessor: Brae Railcar Management, Inc., Three Embarcadero Center, San Francisco, California 94111 Attention Director of Full Service Leasing; or if to Lessee:

D. No failure or delay by Lessor to exercise its rights or remedies hereunder shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor.

E. Headings to the sections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

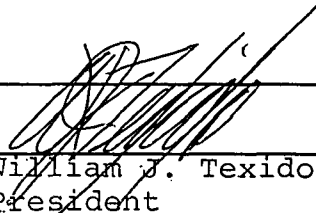
F. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:

BRAE RAILCAR MANAGEMENT, INC.

By



William J. Texido
Title President

CAS

Date August 21, 1980

LESSEE: CARGILL, INCORPORATED

By


Melvin H. Middents, Division Vice President
Title

Date

AUG 14 1980

BRM 6/79

EXHIBIT A

EQUIPMENT SCHEDULE

Brae Railcar Management, Inc., or its assignee ("Lessor"), hereby leases the following Cars to Cargill, Incorporated ("Lessee") on the terms and conditions contained in the Lease Agreement to which this Schedule is attached.

AAR Mech. Design	Description	Numbers	Dimensions			Number of Cars	Effective Date
			Length	Inside Width	Height	Width	
LO	4,700 Cubic Foot Covered Hopper	260,000 - 260,124 (inclusive) CAS	(FMC General Specifications are attached)			125	

CARGILL, INCORPORATED

By



Title

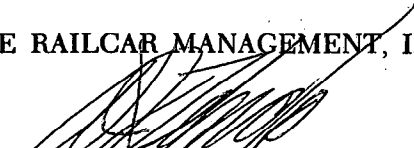
Melvin H. Middents, Division Vice President

Date

AUG 14 1980

BRAE RAILCAR MANAGEMENT, INC.

By


William J. Texido

Title Vice President CAS

Date August 21, 1980

EXHIBIT A (reverse side)

1. Term of Agreement

The term of this Agreement as to each Car shall begin on the Effective Date for such Car and terminate ~~on the last day of the calendar month in which the Effective Date occurs~~ on May 31, 1981.

2. Fixed Rent

\$490.

The monthly fixed rent for each Car shall equal ~~1/12 of the manufacturer's quoted invoice price for such Car~~

~~If the term of this Agreement with respect to any Car exceeds 60 months, then fixed rent shall be recomputed at the sixtieth month and every 12 months thereafter by multiplying the original monthly fixed rent by a fraction, the denominator of which is the AAR Index for Labor and Steel for the Effective Date and the numerator of which is such AAR Index for the most recent available period at the time such recomputation is being made.~~

3. Additional Rent

The additional rent for each Car for a Full Year shall equal two cents (\$.02) multiplied by the number of miles which such Car has travelled in excess of ~~30,000~~ miles during such Full Year.

The additional rent for each Car for each Partial Year shall be calculated by (1) dividing the total number of days during which such Car was leased by Lessor to Lessee during such Partial Year (the "total daily usage") into the total number of miles that such Car travelled during such Partial Year, and (2) subtracting therefrom the figure 95.89. If the resulting figure ("excess daily mileage") is positive, then additional rent shall be payable for such Partial Year and shall equal the following:

(excess daily mileage) × (total daily usage) × (\$.02.)

4. Delivery Point

Lessor shall deliver the Cars to Lessee at the following location or locations:

(to be designated before delivery of
the cars)

5. Delivery Period

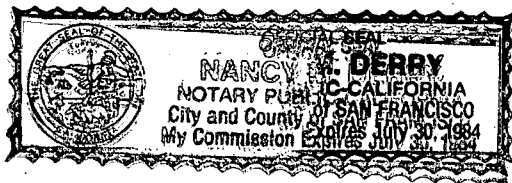
September, 1980

6. Lessee's Purpose

Loading grain or grain-related products.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO }

On this 21st day of August, before me personally appeared William J. Lepido,
to me personally known, who, being by me duly sworn says that he is President of Brae 98
Railcar Management, Inc., and that the foregoing Lease Agreement and Equipment Schedule(s)
were signed on behalf of such corporation by authority of its Board of Directors, and he acknowl-
edged that the execution of such instruments were the free acts of such corporation.



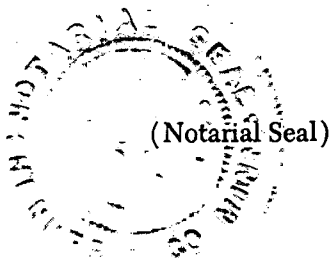
(Notarial Seal)

Nancy M. Derry
Notary Public
My Commission expires July 30, 1984

STATE OF MINNESOTA }
COUNTY OF HENNEPIN }

On this 14th day of Aug., 1980, before me personally appeared Melvin H. Middents,
to me personally known, who, being by me duly sworn says that he is Div. Vice Pres. of Cargill,
Incorporated, and that the foregoing Lease Agreement and Equipment Schedule(s)
were signed on behalf of such corporation by authority of its Board of Directors, and he acknowl-
edged that the execution of such instruments were the free acts of such corporation.

Rodney M. Olson
Notary Public
My Commission expires December 8, 1982



BRMI 6/79

